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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,143	10/21/2003	Stephen B. Murphy	702.153	4966

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EXAMINER

REIMERS, ANNETTE R

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,143

Applicant(s)

MURPHY, STEPHEN B.

Examiner

Annette R. Reimers

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>01/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of Invention 1, claims 1-9, and Species I, Figure 1, in the reply filed on February 28, 2005 is acknowledged.

In response to applicant's arguments with regard to the restriction requirement of Inventions I and II, it is noted that applicant's arguments are persuasive and the restriction of the inventions is withdrawn.

With regard to the requirement for election of Species, it is noted that applicant's arguments are not persuasive. In response to applicant's arguments that Figure 1 is the same as Figures 2A or Figure 2B, it is noted that just by looking at Figures 1-2B, it is clear that they are different embodiments, i.e. Figure 1 is a solid connection, whereas Figure 2A is a universal joint and 2B is a flexible coupling. Thus, Figures 1, 2A and 2B are considered to be different embodiments, i.e. different species.

It is further acknowledged that applicant believes that claims 1-13, 16-18 and 20 read on the elected Species, Figure 1. The examiner agrees with the applicant regarding all claims except claims 5-6, 9-13, 16-18 and 20. The elected Species, Figure 1, does not have a "universal joint", a "bevel gear" or a "threaded connection" and the actuator is not "within said body" as required in claims 5-7 and 9. Furthermore, the elected Species, Figure 1, does not have "a first leg extending from said connection and parallel to said attachment axis", as required by claims 10-13, 16-18, and 20.

Art Unit: 3732

Claims 5-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction /election requirement in the reply filed on February 28, 2005.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5), because they do not include the following reference sign(s) mentioned in the description: reference Ai on page 6, line 6, of the specification. Correction is required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to comply with 37 CFR 1.84(p)(5), which states: "Reference characters not mentioned in the

Art Unit: 3732

description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings." Reference I of Figure 1 is not mentioned in the detailed description. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ryland et al. (U.S. Patent Number 5,169,399).

Ryland et al. disclose an acetabular impactor comprising an impactor body, 12, a releasable connection, 30, and a remote actuator, 60, that is swingable independent of the impactor body, and includes a mechanical drive (see Figure 1 and Column 4, lines 26-43).

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Art Unit: 3732


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
PRIMARY EXAMINER